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# Affirming the Unborn Victims of Violence Act of 2004

## **Abstract**

The Unborn Victims of Violence Act is a federal criminal law that amends the United States Code and the Uniform Code of Military Justice "to protect unborn children from assault and murder, and for other purposes."<sup>9</sup>

## **Affirming the Unborn Victims of Violence Act of 2004**

Anthony Reinhart

“As of today, the law of our nation will acknowledge the plain fact that crimes of violence against a pregnant woman often have two victims,” President George W. Bush said before signing the Unborn Victims of Violence Act of 2004 on April 1, 2004.<sup>8</sup> This act is also referred to as “Laci and Conner’s Law” in honor of Laci Peterson, a California woman who was found murdered after disappearing on Christmas Eve in 2004. She was eight months pregnant with a son who was to be named Conner. The Unborn Victims of Violence Act is a federal criminal law that amends the United States Code and the Uniform Code of Military Justice “to protect unborn children from assault and murder, and for other purposes.”<sup>9</sup> Bush signed the act after five years of intense political controversy that began when Congresswoman Melissa Hart of Pennsylvania introduced the bill on May 7, 2003. During the signing ceremony, President Bush said “any time an expectant mother is a victim of violence, two lives are in the balance, each deserving protection, and each deserving justice. If the crime is murder and the unborn child’s life ends, justice demands a full accounting under the law.”<sup>10</sup> The law only applies to federal jurisdiction, federal officials, and federal crimes (e.g. terrorism, drug-related crimes, crimes committed on federal property, and crimes committed by federal officials and employees and members of the military). Within the act an “unborn child” is defined as a “child in utero,” which means “a member of the species homo sapiens, at any stage of development, who is carried in the womb.”<sup>11</sup> This definition has caused debate because abortion rights supporters believe the legislation defines life as starting from conception and therefore grants legal personhood to the unborn.

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<sup>8</sup> George W. Bush. “President Bush Signs Unborn Victims of Violence Act of 2004.” White House Transcript.

<http://www.whitehouse.gov/news/releases/2004/04/20040401-3.html>.

<sup>9</sup> Public Law 108-212.

<sup>10</sup> Bush, *Ibid*.

<sup>11</sup> Public Law 108-212.

The act specifically states the federal government cannot prosecute “for conduct relating to an abortion for which the consent of the pregnant woman...has been obtained.”<sup>12</sup> Critics still fear that this act might set a legal precedent. Abortion opponents, however, receive the law as a step toward more protection for unborn children.

The following is a Supreme Court opinion by this author that addresses a hypothetical case brought before the Court. Mr. Doug A. Grave is a fictitious character who is challenging the federal law. The purpose of this opinion is to present one possible response by the Court that affirms the constitutionality of the Unborn Victims of Violence Act of 2004.

***Doug A. Grave v. United States***  
Unborn Victims of Violence Act of 2004  
(Laci and Conner’s Law)

Mr. Justice Reinhart delivered the opinion of the Court.

Unfortunately, violence against women and their unborn children is a far too common occurrence in our society. It has come to a point in which homicide is the leading cause of death of pregnant women in some states.<sup>13</sup> There remained, however, an expansive hole in federal law which would allow an unborn child to be killed or injured during the commission of a federal crime, such as terrorist attacks, drug-related crimes, or crimes committed on federal property, without the deterrent of legal consequences. The Unborn Victims of Violence Act, also referred to as Laci and Conner’s Law, was enacted to solve the shortcoming in federal law.

The act makes it a crime to harm, whether by death or injury, a “child in utero” during an assault on a pregnant woman. The assailant who commits such a crime that falls under federal jurisdiction is therefore punishable for two separate offenses, one

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<sup>12</sup> Ibid.

<sup>13</sup> Isabelle L. Horon and Diana Cheng, “Enhanced Surveillance for Pregnancy-Associated Mortality- Maryland, 1993-1998,” *Journal of the American Medical Association*, 2001, 285: 1455-1459.

against the mother and one against the fetus. It is of my opinion that this law passes the constitutionality test and should, therefore, be enforceable. The act is not only constitutional but vitally important to expectant mothers and their families by serving as a deterrent for anyone who would consider harming a pregnant woman or the fetus. It thereby promotes both the woman's and state's interests.

The leading constitutional question stemming from the act comes from *Roe v. Wade* and the subsequent cases that followed. However, nothing in the Unborn Victims of Violence Act affects, much less unconstitutionally restricts, a woman's right to terminate her pregnancy in regards to the Court's precedent. Whether such a right exists or not is not the question in this case. Contrary to assertions put forward by some members of this Court and the plaintiff, Mr. Grave, the Unborn Victims of Violence Act has no connections whatsoever with abortion. The act states in Section 1841: "Nothing in this section shall be construed to permit the prosecution—(1) of any person for conduct relating to an abortion...; (2) of any person for any medical treatment...; or (3) of any woman with respect to her unborn child."<sup>14</sup>

The current constitutional standard that applies to abortion is the "undue burden" test put forward in *Planned Parenthood v. Casey* and affirmed by the Court in *Stenberg v. Carhart*. Justice Breyer delivered the opinion of the Court in *Stenberg*, arguing that "An undue burden is... shorthand for the conclusion that a state regulation has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus."<sup>15</sup> The language of the law adequately maintains the right to an abortion. No liability exists under this act for any person who conducts an abortion for which consent is granted by the pregnant woman or to any person for medical treatment for either the pregnant woman or the fetus. The act does not inhibit the woman's choice to bear or not to bear a child.

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<sup>14</sup> Public Law 108-212.

<sup>15</sup> *Stenberg, Attorney General of Nebraska, Et Al. v. Carhart*, 530 U.S. 914. Cited in *Planned Parenthood of Southern Pa. v. Casey*, 505 U.S. 877 (joint opinion of O'Connor, Kennedy, and Souter, JJ.).

The woman's right to carry her child to term extends not only to a woman's right to have an abortion but to a woman's right to carry her pregnancy to term and deliver a child in safety. Using physical violence against a woman that harms the child is a violation of the woman's right to choose because it prevents or her from maintaining that choice. If a woman decides to carry her child to term and someone inhibits that choice then should be recourse to justice. This act provides that accountability. Justice Blackmun, delivering the opinion of the Court in *Roe v. Wade*, is in support of this position. The Court's opinion centers on ensuring the safety of mothers and the protection of women, especially in cases that may endanger the mother's well being. The Court utilized a trimester system that took full consideration of the mother's health. Blackmun argued "For the stage subsequent to approximately the end of the first trimester, the State, in promoting its interest in the health of the mother, may, if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health."<sup>16</sup>

Some members of this bench have questioned whether it is reasonable to apply this law if the person who commits an act against a woman is unaware that she is pregnant. It is not only reasonable but necessary. In *Stenberg*, the Court argued that "The State's interest in regulating abortions before viability is 'considerably weaker' than after viability," although the State still maintains an interest and a right to regulate.<sup>17</sup> Justices O'Connor, Kennedy, and Souter arguing for the majority in *Planned Parenthood* furthered this point. They affirmed "Roe's holding that 'subsequently to viability, the State in promoting its interest in the potentiality of human life, may, if it chooses, regulate, and even proscribe, abortion except where it is necessary in appropriate medical judgment, for the preservation of the life or health of the mother.'"<sup>18</sup>

Objections have also been raised whether or not the Unborn Victims of Violence Act confers legal personhood to unborn

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<sup>16</sup> *Roe v. Wade*, 410 U.S. 113.

<sup>17</sup> *Stenberg*, *ibid.*

<sup>18</sup> *Planned Parenthood*, *ibid.*

children because it protects a “child in utero”. It has been argued that this would be inconsistent with the Court’s ruling on *Roe* and the cases that have affirmed that ruling. However, the Court has never held in *Roe* or any cases that followed that unborn children are not persons. The Court’s decision in *Roe* stated that the “[Court] need not resolve the difficult question of when life begins... [T]he judiciary...is not in a position to speculate as to the answer.”<sup>19</sup> This argument agrees with that decision.

The Court has made its decision based on two tenets. First, this case does not intrude on *Roe* nor does it create any inconsistencies with prior Court rulings. Secondly, the State has an interest in the earliest stages of pregnancy. The Unborn Victims of Violence Act passes the constitutional test; therefore, the ruling of the Appellate Court is upheld. The judgment of the lower court is

*Affirmed.*

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<sup>19</sup> *Roe*, *ibid.*

### Works Cited

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